

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NEW YORK BRANCH OFFICE
DIVISION OF JUDGES**

ROTOR CLIP COMPANY, INC.

and

Case No. 22-CA-25418

DAVID JANAS, An Individual

Saulo Santiago, Esq., Counsel for the General Counsel
Sanford Oxfeld, Esq., *Oxfeld Cohen, P.C.*, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on May 20, 2003 in Newark, New Jersey. The Complaint herein, which issued on December 26, 2002¹ and was based upon an unfair labor practice charge that was filed on October 10 by David Janas, an individual, alleges that Rotor Clip, Inc., herein called the Respondent, violated Section 8(a)(3) of the Act when it discharged Janas on April 18 because of his activities on behalf of International Union of Operating Engineers, Local 68, AFL-CIO, herein called the Union.

Findings of Fact

I. Jurisdiction

The Respondent admits, and I find, that it has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

The Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

The parties herein are Janas, who was employed by the Respondent for three and a half years as a maintenance mechanic and was discharged by the Respondent on April 18, Jonathon Slass, herein called Jonathon, the Respondent's general manager, and Bob Slass, herein called Bob, Jonathon's father, who originated and built the Respondent, and is its president. It is clear that Bob, who was instrumental in Janas' discharge, is an extremely bright and energetic executive who is a "hands on" representative of the Respondent.

Janas' job required him to perform all sorts of maintenance work at the facility, including plumbing, painting, electrical work and carpentry, changing door knobs and working on the

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2002.

production equipment at the facility. He testified that prior to April 18, he never received any complaints from management about the work that he performed, nor did he ever receive either an oral or written warning from the Respondent. Gary Librizzi, who was employed by the Respondent for four and a half years until April, and was Janas' supervisor, testified that he never had any complaints about his work: "He was a good person, he was a good worker and on occasion...as with everybody, it was my job to motivate these guys." Librizzi was indirectly aware of a situation in about October 2001 where Bob was not happy with a plumbing job that Janas had performed. Janas told him that Bob was upset about the quality of his work on the job. Bob testified that Janas was assigned to repair a leaking water pipe that was encased in plaster. He happened to observe his work, and "...made a remark and put him straight how to do it...I try to fix people's errors. I never wrote those things up or made an issue of it, but when you catch things that are bad on a guy that's supposed to be a good mechanic that doesn't go well..." He testified further that he: "...straightened him out, so he could do a passable job on that" and he told Jonathon about this incident. In about October or November 2001, the Respondent learned of complaints about its hose clamps on washing machines at a warehouse in Virginia. They asked for volunteers to go there, and Janas and Librizzi volunteered and drove to Virginia to inspect the clamps. After they returned, Janas received a thank you and a bonus in his check the following week.

The Respondent gives periodic wage increases to its employees, usually two or three times a year. Janas received a 25 cent an hour wage increase every four months and never failed to get one of these periodic increases during his employment with the Respondent. He knows of one employee, Clay Horton, who did not receive a scheduled increase. Jonathon testified that his father is very generous and gives raises automatically, either on a seventeen or twenty six week cycle, depending on the employee: "it's very...difficult not to get a raise although it does happen from time to time...we tend to err on the side of...giving the raise, even if we think we shouldn't." Horton was denied a scheduled pay raise on one occasion. Janas got all his scheduled pay raises.

Janas was involved in the Union's organizational drive at the Respondent's facility beginning in February. He testified that he and a couple of other of Respondent's employees were upset about the lack of written policies at the company and about a few changes in their terms of employment. He spoke to representatives of the Union and fellow employees about the Union. He attended two Union meetings. The first was with two other employees at the Union office on about March 3. The Union representative, Bill Goodman, told them to see how many employees were interested in the Union. The employees involved were the skilled employees of Respondent, about thirty nine in number. Goodman told them to speak to fellow employees before work, during lunch and after work. From the middle of February until April 18, Janas spoke to other employees outside the facility before work, or on the steps outside the tool room during lunch. He also spoke to employees sitting in their cars, or on the loading dock, or he called them from his home. He told them that he was trying to bring in the Union, and asked them if they were interested or if they had any questions or concerns about what the Union could do for them. The other Union meeting was held on about April 1, with about ten employees present. Prior to this meeting, Janas picked a day for the meeting that would be convenient for the employees and gave the employees directions on how to get to the meeting. Once they got to the meeting, he didn't say much. Goodman told the employees of the benefits the Union could get them, and said that before the organizational drive went any further, they needed 70% of the employees to express an interest in the Union, and until that happened, he would not distribute Union authorization cards for signatures.

The events of April 18, leading up to Janas' termination are undisputed. He was assigned to install new door handles in the office area of Building 2 on that day. The new door

handles and hardware were a different size than the old door handles. The striker plates were both bigger and thicker than the strikers on the old door handle, requiring Janas to use a chisel to enlarge the area where the striker is inserted. Janas testified that he didn't have a wood chisel, so he was using a razor knife to make a straight line and a rigid putty knife to chip the wood. Bob walked by and asked him if he had a wood chisel, and when Janas said that he didn't, Bob called Robert Primelli, a supervisor, who got a wood chisel. A wood chisel has a flat side and a beveled side; Janas was using it with the flat side down. Bob came by and told him that a wood chisel should be used with the beveled side down. Janas tried it and said: "Yes, you're right, it does work better this way." Bob told him, "Stick with me kid, and I will make you a carpenter some day." Later that morning Librizzi told Janas to come into the conference room. When he got there John Natale, the plant manager, told him that he was being laid off, no reason was given, and that he would be paid for the rest of the day and for his vacation. When he objected about being let go for no reason, Natale told him that he was laid off for no reason and that the Respondent was not contesting it, and that he would be able to collect Unemployment.² Natale then told Librizzi to take Janas to get his tools and not let him speak to anybody and to escort him out.

Librizzi testified that on the morning in question, Natale told him to bring Janas with him into the conference room: "We're letting him go." He testified, "I was told that when I came in there to keep my mouth shut and listen." When they were in the conference room: "John Natale told Dave he was letting him go, for no reason, no cause, he could collect unemployment and that was it." Librizzi testified that Janas had previously changed door locks and handles at the facility on about a dozen times without any complaints. He is not aware of any need to repair the door that Janas had been working on. He was not told on that day why Janas was being fired and he did not question Jonathon that day about why Janas was being terminated.

Bob testified that on April 18 the company was changing the locks on the doors at the facility from round to lever type locks. On that day he observed Janas using the wrong side of the chisel and "I showed him the right way and I did make a remark, I said stick around me I will teach you carpentry." After he showed Janas the proper way to do it, "He struggled." Bob testified that the incident got him "disgusted" because Janas was destroying a valuable door, although no evidence was produced to established that the door was damaged. He told Jonathon that Janas had no mechanical ability:

Q Did you make any suggestions about retaining his employment with the company?

A I sort of indicated to Jonathon that if he was hired as a mechanic and he didn't mechanical ability [sic] he should not be working for Rotor Clip and not very many people get let go from Rotor Clip.

Q After saying that to Jonathon did you have any other involvement in this matter?

A Well, I told Jonathon to let him go.

Jonathon testified that on April 18, while he was in his office, he received a telephone call from Bob, who was screaming so loudly, Jonathon had to hold the telephone away from his ear. Bob said: "I want him out of here." Jonathon asked him if he had screamed at Janas, and Bob said that he knew better than that. Jonathon testified:

² The Respondent traditionally lays off employees rather than firing them so that they can collect Unemployment.

I had to make a decision...do I respect my father's wishes, do I recognize the fact that he has a temper, do I pick this as a time to have a fight, cause Dave is a very nice gentleman...but the bottom line was—was I not ready to pick this fight with my father, it is very mentally challenging to deal with that.

Jonathon called Natale, told him to get a witness and to terminate Janas for no cause; to call it a layoff so that he could collect unemployment. He never told Librizzi the reason for Janas' termination because he was embarrassed that his father "had flipped out." He testified: "I really didn't share the reasons, because I didn't totally agree, but he is my father, I have a job, he's the reason I am physically alive and I respect him. I wasn't going to further smear him by talking about the reasons." In a document turned over to Counsel for the General Counsel during the investigation of this matter, the Respondent stated that Janas was terminated for "poor skills." When Jonathon was asked whether this was the first time in Janas' three and a half years of employment that they noticed his poor skills, he testified: "We tend to error on the side of keeping people employed."

Jonathon testified that he had no knowledge of the Union's organizational campaign until he received notification from the Board, presumably, of Janas' unfair labor practice charge. The only evidence of Respondent's knowledge of Janas' Union activities is from Librizzi's testimony. Librizzi's employment with the Respondent ended on April 29. The event that precipitated his loss of employment with the Respondent was that he found the pay stub of Jay Stephanowicz, another supervisor, and realized that his salary was higher than Librizzi's, although he had not been employed by the Respondent for as long a period of time. Librizzi showed the pay stub to Jonathon and told him that he felt that he should be paid more than Stephanowicz. Jonathon refused this request, and Librizzi's employment with the Respondent ended. Librizzi testified that he was fired; Jonathon testified that Librizzi came to his office on the morning of April 29 saying that he was still upset about his pay as compared to Stephanowicz. Jonathon asked him, "Gary, can I ever make you happy?" Librizzi answered, "I guess not." Jonathon said, "I don't see how we can work together" and Librizzi said, "I guess not." Librizzi then handed Jonathon his keys to the facility and walked out.

Librizzi's testimony is not a model of clarity and is, at times, difficult to follow. He testified that, at the beginning of April, Horton told him that Janas had approached him about joining the Union, but he said that he wasn't interested, and Librizzi told Janas that if he continued with this activity, he would be discharged. Janas did not testify about this incident and Librizzi did not tell Jonathon about his conversation with Horton or Janas. He testified further that prior to Janas' termination, he (Librizzi) was supposed to fire employee Rene Diomedi. However, Jonathon told Librizzi not to fire Diomedi because he was the employee who told Jonathon about the Union. Later, on direct examination, he testified that Jonathon said: "Do not fire Rene Diomedi, he told me or informed me about Dave's organizing a union and I owe him, do not discharge him." On the day following Janas' termination, Librizzi asked Jonathon about it and Jonathon said: "Having a union in here is worse than having OSHA in here." Jonathon testified that none of his employees, including Diomedi, informed him that the Union was attempting to organize his employees, he was not aware that Janas was active for the Union in its organizational drive and that he never made the statement about OSHA. Diomedi, who has been employed by the Respondent for 13 years, testified that in early 2002 Janas asked him if he wanted to go to a Union meeting, but he never told Jonathon about this conversation, or any conversation, that he had with Janas, or anybody else, about the Union.

IV. Analysis

Credibility is a major factor in the analysis of these facts under *Wright Line*, 251 NLRB 1083 (1980). I found Janas to be a totally credible and believable witness. He testified in a direct manner and did not exaggerate his answers or attempt to avoid any questions. However, his testimony did not establish that the Respondent was aware of his Union activities. The only testimony supporting that was Librizzi's, and his testimony was not as credible for a number of reasons. He was angry with the Respondent for paying Stephanowicz more than they paid him, which resulted in the termination of his employment with the Respondent. In addition, his testimony was all over the place and, sometimes, difficult to follow. However, based upon all of the facts herein, I credit his testimony that Jonathon told him that Diomedi told him of Janas' Union activities as well as his testimony about Jonathon's statement to him on April 19, in response to his question about Janas' termination, that having a union is worse than having OSHA. There are two factors that I find convincing in this regard. Janas was an employee for three and a half years. Up to April 18, he had made only one obvious error, the plumbing incident six months earlier. He had received every scheduled wage increase and had received a thank you and a bonus from the Respondent for volunteering to go to Virginia to check on the validity of complaints about one of the Respondent's products. However, he was fired in the middle of a workday on April 18 and Natale told Librizzi to escort him out of the building and not let him speak to anybody. Although a judge cannot substitute his reasoning for that of an employer who has fired an employee, he or she can examine the facts and the reasonableness of an employer's actions to assist in credibility determinations. That Janas was fired after only his second error in three and a half years of employment, together with the fact that he was fired in the middle of a work day and told to leave without speaking to anybody, convinces me that there was another reason behind the Respondent's action, and that Librizzi's testimony should be credited. I therefore find that Counsel for the General Counsel has satisfied his *Wright Line* burden and that the Respondent has not. I therefore find that Janas was discharged in violation of Section 8(a)(1)(3) of the Act.

Conclusions of Law

1. The Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent discharged David Janas on April 18, 2002 in violation of Section 8(a)(1)(3) of the Act.

The Remedy

Having found that the Respondent unlawfully terminated Janas, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. It must offer Janas reinstatement to his former position and make him whole for any loss of earnings and other benefits that he suffered as a result of the discrimination against him, computed on a quarterly basis from the date of discharge to the date of a full offer of reinstatement to his former position, less any interim earnings as set forth in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact, conclusions of law and on the entire record, I issue the

following recommended³

ORDER

5 The Respondent, Rotor Clip Company, Inc., its officers, agents, successors and assigns,
shall

1. Cease and desist from:

10 (a) Discharging or otherwise discriminating against its employees for supporting the
Union or for engaging in any other Union or protected concerted activities.

(b) In any like or related manner, interfering with, restraining or coercing employees in
the exercise of rights guaranteed them by Section 7 of the Act.

15 2. Take the following affirmative action necessary to effectuate the policies of the Act:

20 (a) Within 14 days from the date of this Order, offer David Janas full reinstatement to his
former job, or if that job no longer exists, to a substantially equivalent position, without
prejudice to his seniority or other rights and privileges previously enjoyed, and make him
whole for any loss of earnings and other benefits suffered as a result of the
discrimination against him, in the manner set forth above in the remedy section of this
Decision.

25 (b) Within 14 days from the date of this Order, remove from its files any reference to the
unlawful discharge, and within 3 days thereafter notify the employee in writing that this
has been done and that the discharge will not be used against him in any way.

30 (c) Preserve and, within 14 days of a request, or such additional time as the Regional
Director may allow for good cause shown, provide at a reasonable place designated by
the Board or its agents, all payroll records, social security payment records, timecards,
personnel records and reports, and all other records, including an electronic copy of
such records if stored in electronic form, necessary to analyze the amount of backpay
due under the terms of this Order.

35 (d) Within 14 days after service by the Region, post at its facility in Somerset, New
Jersey copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms
provided by the Regional Director for Region 22, after being signed by the Respondent's
authorized representative, shall be posted by the Respondent immediately upon receipt
40 and maintained for 60 consecutive days in conspicuous places including all places
where notices to employees are customarily posted. Reasonable steps shall be taken by

45 ³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations,
the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the
Rules, be adopted by the Board and all objections to them shall be deemed waived for all
purposes.

50 ⁴ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in
the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD"
shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF
APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 18, 2002.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

Joel P. Biblowitz
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge, or otherwise discriminate against our employees because of their support for International Union of Operating Engineers, Local 68, AFL-CIO, or for any other labor organization.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days of the date of this Order, offer David Janas full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed, and **WE WILL** make him whole for any loss that he suffered as a result of our actions.

ROTOR CLIP COMPANY, INC.
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

20 Washington Place, 5th Floor, Newark, NJ 07102-3110

(973) 645-2100, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (973) 645-3784.